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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/304,393	05/04/1999	ANDRE RUDOLF LOUIS COLAS	VN24	9604

137 7590 03/04/2004

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EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 12/30/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-6, 8, 10 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-6, 8, 10 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The Examiner notes for the record that in the listing of claims accompanying their present response, applicants indicate that claims 7 and 9 are pending, whereas in fact they were both cancelled in the prior response dated April 24, 2003. Additionally, the Examiner further notes that claims 2-6 were inadvertently indicated as withdrawn from consideration in the prior action, whereas in fact the Examiner had intended to reject these claims, but failed to properly indicate so in his Office action. In view of this latter fact, the following Action accordingly cannot be made Final.

3. Claims 1-6, 8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fabo (WO -076) taken in view of Canadian -509, substantially for the reasons set forth in paragraph No. 3 of Paper No. 18, together with the following additional observations. The Examiner has little to add to his prior action except to note that the two references are relied upon in combination, a fact that applicants throughout their response (e.g. page 5) seem to be unaware of. It is noted for the record that in view of applicants' remarks the Examiner would again like to emphasize that Fabo is relied upon for , among other structural items, the teaching of a suitable silicone gel,

and the Canadian reference discloses the missing element that prosthesis materials may be attached to the human body such as the chest wall by suitable silicone type adhesives (e.g. page 5, lines 17-19). Finally, with respect to applicants' remarks concerning their particular silicone gel adhesive compositions, the Examiner notes that no attached literature has been submitted with the present response describing the silicone gel (Response, pages 5-6 bridging paragraph), applicants' statements to the contrary notwithstanding. With respect to the dependent claims, which were not argued before the Examiner's affirmance before the Board of Appeals, the only claim that could possibly support applicants' statements (Response, page 6) concerning the alleged superior properties of the silicone gels is dependent claim 4, and this claim has not to date been argued during the entire prosecution history. Accordingly, with respect to the dependent claims, the Examiner believes that they are either expressly or inherently disclosed, or obvious modifications to one of ordinary skill, in the absence of unexpected results which have not yet been shown on the record.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Zirker whose telephone number is (571) 272-1486. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00

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P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for this Group is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dzirker:cdc

February 26, 2004

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1300
1700

Daniel Zirker